

1 finish this line subject, I'm not saying subject to your
2 objection but I'm recognizing, in recognition of your
3 objection and I'll have to sift through this on the record
4 later. I want to see how, you know, see how this all comes
5 out. Do you understand the question?

6 THE WITNESS: I'd like to have him repeat it.

7 JUDGE SIPPEL: Do you understand my ruling --

8 THE WITNESS: I do. **Yes.**

9 JUDGE SIPPEL: -- you've already answered his
10 questions on this whole line because you already started
11 down this road.

12 MR. SHOOK: Well this happens to be one of those
13 questions that I made up, so I'll have to think about how I
14 phrased it. The best way to do it would be if I could
15 simply have the question played back because that was the
16 question --

17 JUDGE SIPPEL: It's always hard to get it better
18 the second time. Can we go back, Madame Reporter, and find
19 that question? Let's go *off* the record until you find it.
20 Sorry.

21 (Whereupon, a brief recess **was** taken.)

22 JUDGE SIPPEL: On the record. **Mr. Shook**, are you
23 prepared now to restate that question or to **repeat the**
24 question that you asked?

25 MR. SHOOK: Well, as my co-counsel pointed out,

1 the question is relatively simple at that point, at this
2 point, and it is simply what was the result of the motion
3 that had been submitted to the Court of Appeals?

4 THE WITNESS: The motion for the stay that was
5 submitted to the Court of Appeals, we have submitted
6 several. Are you referring to the most recent one?

7 MR. SHOOK:

8 Q We can go through all of them, but certainly we'll
9 start with the most recent and work our way backward.

10 A The most recent one, that's --

11 JUDGE SIPPEL: Excuse me. Are you talking about
12 the Ninth Circuit **or** this circuit?

13 MR. SHOOK: We'll clarify that.

14 JUDGE SIPPEL: Thank you.

15 THE WITNESS: **You'll** have to tell me which court
16 you're talking about.

17 **BY** MR. SHOOK:

18 Q This particular question is focusing on the D.C.
19 Circuit.

20 A Okay. We filed a motion for a stay from the D.C.
21 Circuit and the motion was denied.

22 Q Did *you* file more than one motion with the D.C.
23 Circuit, making the argument that you had made relative --

24 A No.

25 Q -- to Section 307 and Section 405 of the Act?

1 A No. We did file a motion for a stay back in 2000
2 when we had simultaneously filed our rejection, our 1.110
3 rejection. The court said that they denied the motion,
4 actually they dismissed, completely dismissed it because a
5 timely filed 1.110 rejection needed to be resolved before
6 the court could hear our case in that instance.

7 Q Now all of this pertained to what appears after
8 Official Notice tab 4 and I would like to direct your
9 attention to --

10 JUDGE SIPPEL: There's a little bit more than
11 that, though? I saw something that was a briefing schedule
12 for the 26th of this month or something? What's that all
13 about?

14 MR. SHOOK: Your Honor, there is an appeal that is
15 taking place of the May 19, 2000 or May 18, 2001 Commission
16 order and it's that document that is being briefed right
17 now. It's my understanding that Peninsula has filed its
18 brief and that other briefs will **be** filed shortly and that
19 oral argument is **to** take place in January 2003 and then,
20 well we'll see.

21 JUDGE SIPPEL: So the Court of Appeals is still
22 considering the merits of this case?

23 MR. SHOOK: *Of the May 18, 2001 order, yes.*

24 JUDGE SIPPEL: Which is the order that says stop
25 broadcasting, and that's the other one --

1 MR. SHOOK: Correct. Correct.

2 MR. SOUTHMAYD: If I could be heard just for
3 clarification.

4 JUDGE SIPPEL: Go ahead. I mean don't start
5 arguing.

6 MR. SOUTHMAYD: No, no, sir.

7 JUDGE SIPPEL: Go ahead and clarify if you want,
8 but.

9 MR. SOUTHMAYD: There was an appeal filed to one
10 of the earlier orders that was dismissed because the Court
11 of Appeals said it was prematurely filed. However, there is
12 currently an appeal pending of the May 2001 order and in
13 fact all of the previous orders that is before the Court of
14 Appeals.

15 At this juncture, Peninsula has filed its brief.
16 The FCC is due to file its brief later this month. The
17 intervenors will file reply briefs leading up to oral
18 argument in January of 2003, so it is a currently pending
19 matter before the court. Our previous one was dismissed.

20 JUDGE SIPPEL: All right. My question is
21 answered. I asked a question and it got answered. Okay.

22 BY MR. SHOOK:

23 Q Mr. Becker, with respect to the footnote 59 on
24 which you place so much reliance, you would agree with me,
25 would you not, that it appears following text in the report

1 and order that concerns signal delivery?

2 A Do you want to give me the reference?

3 Q Yes, sir, Official Notice Exhibit 4 or what has
4 been tabbed as such. If you go to pages 9 and 10, you will
5 see where footnote 59 appears.

6 JUDGE SIPPEL: Where footnote 59 is cited

7 MR. SHOOK: Where it is cited.

8 JUDGE SIPPEL: Where it is cited?

9 MR. SHOOK: Where the footnote is -

10 JUDGE SIPPEL: What paragraph, yeah, what
11 paragraph is that?

12 MR. SHOOK: Sixty-one.

13 JUDGE SIPPEL: Sixty-one.

14 THE WITNESS: Yeah, I see where the footnote is

15 BY MR. SHOOK:

16 Q Now would you agree that Section 74.1232d of the
17 Rules has nothing to do with signal delivery?

18 A 741232d I believe is an ownership restriction for
19 translators outside the primary signal contrary of the
20 primary station if I have the right section.

21 Q You do.

22 A Okay.

23 Q It has nothing to do with **signal** delivery, right?

24 A That's an ownership waiver. May I say something?

25 Q Well if **you** would please simply answer the

question that I posed which is it doesn't have anything to
2 do with signal delivery, correct?

3 A Ownership restriction does not pertain to signal
4 delivery per se.

5 Q Now looking at footnote 59 itself which appears on
6 page 34 of the exhibit, and for purposes of others being
7 able to follow where we are, this is 5 FCC Record at page
8 7245. If you look at that footnote, you would agree,
9 wouldn't you, that it says nothing about waiving ownership
10 restrictions?

11 A If you're referring to the examples that are
12 listed following Rangel Radio Group, ownership restriction
13 is not listed in the examples. However, Rangel was broadly
14 applied to many other things besides simply signal
15 origination.

16 Q When you say broadly applied, are you referring to
17 action by the Commission itself --

18 A Yes.

19 Q -- or simply by the staff?

20 A Well, I'm not prepared to make the distinction.

21 Q I just wanted to know your understanding.

22 A We were granted licenses for Seward, for example,
23 that included not only signal delivery but it included a
24 waiver of the ownership restriction and the Commission or
25 whoever it was, the FCC, issued a letter granting me a

1 waiver of ownership restrictions and cited Rangel.

2 Q We'll get to that. I'd like you to turn to the
3 Enforcement Bureau exhibit.

4 JUDGE SIPPEL: I just want to make an observation.
5 It's 12:30 now. Are you shifting to another line of
6 questioning? This might make me think that this might be an
7 appropriate time to break for lunch.

8 MR. SHOOK: I am shifting.

9 JUDGE SIPPEL: Why don't we break for lunch. It's
10 12:30, so we can come back at quarter of two? All right.
11 We're at recess until quarter of two. You're still under
12 oath, but you wouldn't be talking to these other witnesses
13 anyway. We're off the record.

14 (Whereupon, at 12:30 p.m., a recess was taken, to
15 reconvene at 1:45 p.m. this same day.)

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A F T E R N O O N S E S S I O N

(1:45 p.m.)

JUDGE SIPPEL: We're on the record. Mr. Becker,
you're still under oath.

Whereupon,

DAVID BECKER

having been previously duly sworn, was recalled as
a witness and was examined and testified as follows:

BY MR. SHOOK:

Q Mr. Becker, could you please turn to tab 7 of the
Enforcement Bureau exhibits.

JUDGE SIPPEL: These are the notice exhibits.

MR. SHOOK: No, sir.

JUDGE SIPPEL: No?

MR. SHOOK: These are the other exhibits.

BY MR. SHOOK:

Q I would like you to direct your attention to pages
19 through 35 of what follows tab 7.

A Okay

Q **Now** take as much time as you need, but my question
is do you recognize this document?

A It's a Form 349, Application for New Translator on
Channel 285 in Kenai, Alaska.

Q **Does** your signature appear on page 25 of the
exhibit?

1 A Yes.

2 Q Could you go to page 28, please, and tell me what
3 it is that is there.

4 A It's a request for a waiver of Section 74.1235,
5 requesting a total power output of 100 watts, a waiver for
6 that higher power level, and it lists examples of waivers or
7 stations that, other translator stations in Alaska that were
8 granted the 100-watt total power output authorization.

9 Q So this document is seeking a waiver of one of the
10 translator rules that arguably governs this application?

11 A Yes, the rule limited to ten watts. This sought
12 100 watts.

13 Q All right, now take whatever time it is you need
14 in order to respond to this, but my next question to you is
15 whether this application contains a request for a waiver of
16 Section 74.1232d.

17 A Okay. The application was filed April 8. Let's
18 see, filed May 6 of 1091. The cover letter which
19 accompanied the application cited the Rangel Radio Group
20 exception on page one which is your page 19, and the
21 application itself specified the total operating parameters
22 of this station.

23 In our application, we clearly told the Commission
24 what it was that we intended to do. The station we intended
25 to rebroadcast was clearly outlined in our application to

1 the Commission.

2 The Commission granted the application and so our
3 position is that the Commission was well aware of what we
4 were asking for and they did it under a blanket Rangel Radio
5 Group exception.

6 Q That may well be, but I'm, what I'm asking you to
7 do is point out the specific language that you claim or that
8 you would state supports a request for a waiver of 74.1232d.

9 A The application to my knowledge does not contain a
10 specific breakout of that particular waiver request. The
11 Commission is evident by examining all of the translators
12 that were granted through this time period liberally granted
13 waivers based on Rangel without the need to specifically ask
14 for specific waivers because the application itself clearly
15 indicated what it was that we intended to do.

16 The Commission granted it, so our position **is** that
17 they granted us a Rangel Radio Group waiver based on the
18 application we submitted. They clearly knew what was there.
19 They granted it. We cited Rangel in our submission and so
20 it was, it became a Rangel Radio Group excepted translator
21 by virtue of the fact the Commission granted it.

22 Q I want to make sure I'm clear on some things here.
23 In the cover letter itself, would you *agree that there* is a
24 specific request for a waiver of a freeze that the
25 Commission had imposed in the order that is cited in the

1 second paragraph of that cover letter?

2 A Yes.

3 Q Would you also agree that there is a specific
4 request for a waiver of a Commission rule that appears on
5 page 28 of the exhibit?

6 A Yes.

7 Q Would you also agree that no such specific request
8 for a waiver of 74.1232d appears either in the cover letter
9 or in the application itself?

10 A Yes.

11 Q I now direct your attention to some of the
12 documents that follow tab number 6 in the same binder in
13 which you are looking and the particular pages that I want
14 you to focus on begin at page 17 and continue through page
15 28.

16 A Okay.

17 Q Can you describe for us that document.

18 A It's a form, FCC Form 349 seeking a modification
19 in the output frequency for **FM** translator 285DT in Soldotna,
20 Alaska.

21 Q Does your signature appear on page 23 of the
22 exhibit?

23 A Yes.

24 Q Now aside from the request for a lifting of the
25 freeze that appears in the first page **of** the exhibit or

1 excuse me, it's page number 17 but it's the first page of
2 the cover letter, is there anything in this application that
3 specifically requests a waiver of 74.1232d of the Rules?

4 A This was filed in May of '91. It's my
5 recollection -- Hold on a second.

6 Q Take whatever time you need to look through the
7 application.

8 (Pause)

9 A Okay. The application was filed May 6, 1991. On
10 June 1st of 1991, the revised FM translator rules became
11 effective. This was filed prior to June 1st of '91 and we
12 were operating, this request was filed prior to that where
13 the Commission was not applying the revised FM translator
14 rules as of June 1st, so this was actually filed almost a
15 month prior to that revision which took place on June 1st of
16 '91, and your question about, no, there was no specific
17 waiver request submitted with this because the Commission
18 had on all of **our** previous applications routinely granted
19 Rangel Radio **Group** waivers on the basis of simply specifying
20 what it was that we intended to do in our application form
21 and the Commission routinely granted them. They knew
22 exactly what it was we were doing, and this went into play
23 prior to the revision that happened roughly a month later.

24 Q Do you happen to know whether or not this
25 application was still pending when the rules changed?

1 A I don't have the grant date. In any event, the
2 rules didn't become effective until June 1st of '94, I
3 believe.

4 Q You're thinking of existing translators, right?

5 A This was an existing translator. It was merely a
6 two-channel frequency change was all that happened here.

7 Q But the short answer to my question before is that
8 there wasn't anything in this particular application that
9 requested a waiver?

10 A No. Had we thought it was necessary, we would
11 have submitted it, but there was nothing included here
12 because we operated on the basis that we had always operated
13 through the '80s in the way we filed for and received
14 permits and licenses.

15 Q I now direct your attention to the documents
16 following tab 4 of the Enforcement Bureau exhibits, so it's
17 the same binder that you have in front of you now, and the
18 particular pages I would like you to focus on are pages 47
19 through 58.

20 JUDGE SIPPEL: Excuse me. What tab binder?

21 MR. SHOOK: Four.

22 THE WITNESS: I'm there. I'm with you.

23 BY MR. SHOOK:

24 Q Could you describe for us what this document
25 represents?

1 A It is a modification of the output frequency for
2 FM translator K272BW on channel 274 in Kodiak, Alaska on an
3 FCC Form 349.

4 Q Is that your signature that appears on page 54 of
5 the exhibit?

6 A Yes.

7 Q Is there any place in this application that makes
8 a specific waiver request for 74.1232d of the Rules?

9 A No. May I clarify something?

10 MR. SHOOK: Certainly.

11 THE WITNESS: This application also was a request
12 to change the input channel of the translator as well as the
13 output channel. I believe that's in Exhibit A2 on page 58.
14 There was actually two things involved here.

15 MR. SHOOK: Thank you.

16 BY MR. SHOOK:

17 Q **Now** I would like you to look at the Official
18 Notices exhibit binder and the particular document that I
19 want you to turn to is following tab 7.

20 A Okay.

21 Q Did you receive this document on or about March 4,
22 1996?

23 A It was later than that if it's stamped March 4th,
24 but some time period after that.

25 Q Did you read the document?

1 A Yes.

2 Q Do you recall what, if any, actions you took as a
3 consequence of this letter?

4 A Jeffrey Southmayd, my attorney, filed a letter in
5 response to it is my recollection.

6 Q I next direct your attention to the letter that
7 follows tab 8 in the Official Notice exhibits.

8 A Okay.

9 Q Did you receive this letter on or about September
10 11, 1996?

11 A Well it appears to be September 15th date stamped
12 above the letterhead, so my guess is I received it at some
13 point after that date.

14 Q First of all, in your own words, can you tell us
15 what this letter represents.

16 A This is a letter from Linda Blair.

17 Q Yes.

18 A The letter purports to state that the status of
19 the previous waivers for non-fill-in translator was out of
20 compliance with Section 74.1232d of the Rules and the letter
21 takes the position that our waivers did not continue
22 through, beyond June 1st of 1994. However, that point,
23 we're disputing that point. We disagree with that position
24 on the Commission.

25 Furthermore, it directs Peninsula to divest itself

1 of the owner interests in the non-fill-in translators on the
2 sole condition that we find an unrelated buyer, and that was
3 the only condition that was essentially put into this letter
4 that they indicated they would grant our renewal
5 applications conditioned upon the consummation of the
6 assignments, and that was the only condition placed, if we
7 would assign these so-called non-conforming translators by
8 divesting them, then our license renewals would be granted,
9 and that's on the last paragraph of page 10.

10 Q Did Peninsula seek Commission review of this staff
11 ruling?

12 A I don't know. There were a lot of things that
13 were filed, Tulletson [phonetic] and Gutman [phonetic] put
14 in filings for our competitors and I don't recall the
15 sequence exactly, what happened here.

16 Q If I were to represent to you that in my search of
17 Commission records, I did not find any filing by Peninsula
18 indicating that it sought Commission review, would that
19 assist your memory?

20 A I can't answer that without consulting my counsel.

21 JUDGE SIPPEL: Can you shed any light on this, Mr.
22 Southmayd?

23 MR. SOUTHMAYD: We sought court review. I don't
24 believe we sought Commission review.

25 BY MR. SHOOK:

1 Q When your counsel said that Peninsula sought court
2 review, do you know what court review he's referring to?

3 A The appeal I believe that we filed in February of
4 2000 referenced this letter. I believe that was included in
5 that first appeal before the D.C. Circuit Court of Appeals
6 because we went back all the way to the beginning,
7 basically.

8 Q Do you have any recollection as to whether the
9 entities that are referenced in the letter sought Commission
10 review? Entities other than Peninsula? And by that I'm
11 referring to KSRM, Inc., King Broadcasters, Inc., White
12 Falcon Communications, Inc. and Cobb Communications, Inc.

13 A I'm not able to answer that. I don't really
14 recall the sequence. There was a lot of filings and
15 counter-filings.

16 It's in the record somewhere, but I just don't
17 have it straight in my mind exactly what all took place
18 after this initial letter because there was a problem here I
19 think that my competitors had with the fact that the
20 Commission agreed to grant our license renewals conditioned
21 upon the consummation of the assignments, and my competitors
22 wanted the whole thing to be not renewed period, and there
23 were various filings **and** off the top of my head I can't tell
24 you exactly what happened when and what the sequence was.

25 Q Perhaps this will help. I **now** direct your

1 attention to the other binder and I want you to **look** at the
2 document that follows tab number 10.

3 A Okay. I'm with you.

4 Q Do you recognize this document?

5 A It appears to be a filing that Peninsula submitted
6 in opposition to an application for review that was filed on
7 behalf of Glacier Communications, KSRM, Inc., Cobb
8 Communications and King Broadcasters. They were the
9 petitioners, and this was our opposition to the application
10 for renewal.

11 Q Was this a document that you reviewed prior to its
12 filing with the Commission?

13 A I'm pretty sure Mr. Southrnayd furnished me with a
14 copy of it prior to it going in, so I would say yes.

15 Q In these situations, is this the kind of document
16 that you would approve prior to its filing?

17 A I would defer to **my** counsel on things like this,
18 so if he prepared it and thought it was fit for filing, then
19 I would definitely approve it.

20 Q I want to direct your attention to page 7 of that
21 exhibit, specifically the paragraph that follows roman
22 numeral IV, Conclusion?

23 A Yes.

24 Q Was it your understanding that that paragraph was
25 accurate at the time that it was prepared and filed at the

1 Commission?

2 A At the time, the only condition that was placed on
3 Peninsula was to divest to an independent party which we
4 voluntarily agreed to do and so we intended to comply with
5 the Commission's request that we divest these translators
6 and so yes, we intended to divest these, to divest our
7 translators to an independent party.

8 Q So in other words, what appears following Roman
9 Numeral IV is accurate and truthful?

10 A Yes. We would always tell the truth.

11 Q There then came a time when you attempted to sell
12 the translators we've been talking about to an entity called
13 Coastal Broadcast Communications, Inc.?

14 A Yes.

15 Q You also proposed to sell the two translators that
16 are in Seward, Alaska, to Coastal?

17 A Yes.

18 Q I want you to go to tab 11 **of** the Enforcement
19 Bureau exhibits.

20 A Okay.

21 Q Could you describe for **us** the document that
22 appears following tab 11?

23 A *It's a FCC **Form** 345 application seeking the*
24 *assignment of the license for FM translator K285, Kenai,*
25 *Alaska, to Coastal Broadcast Communications.*

1 Q Were documents similar to this filed with respect
2 to the other eight translators that were going to be sold to
3 Coastal?

4 A That's my recollection, yes. Yes.

5 Q Now turning to page 24 of the exhibit, do you
6 recognize the signatures that appear there?

7 A Page 24?

8 Q Yes, sir.

9 A Yes.

10 Q Whose signatures are they?

11 A For Peninsula myself, David Becker, and for
12 Coastal, David Buchanan.

13 Q Turning to page 4 of the exhibit, there's a
14 signature that appears. Can you identify that signature?

15 A It's my signature on page 4.

16 Q Now the document beginning, when it begins at page
17 10, beginning of page 10 going through the end of the
18 document, so that would be page 10 through page 43, that is
19 the asset purchase agreement that you executed with Mr.
20 Buchanan?

21 A Yes.

22 Q Do you know whether Mr. Buchanan was represented
23 by counsel during the preparation of *the* asset purchase
24 agreement?

25 A You would have to ask Mr. Buchanan.

1 Q Do you have any knowledge whatsoever?

2 A Do you want me to speculate on that?

3 Q No, I don't need your speculation. It's your
4 understanding. Did **Mr.** Buchanan have counsel representing
5 him during the preparation of this asset purchase agreement?

6 A This asset purchase agreement was prepared by Mr.
7 Southmayd and what I don't know is whether or not Mr.
8 Buchanan had his own attorney review it before he signed it.
9 I don't have knowledge of that, but I know that the document
10 was prepared by Mr. Southmayd.

11 Q Did Mr. Buchanan ever introduce you to an attorney
12 that was representing him during the preparation of the
13 asset purchase agreement?

14 A No, because I never saw Mr. Buchanan. He lived in
15 Eagle River, 200 and some miles away. This was transmitted
16 through the mail and so forth, so he never introduced me to
17 anyone that he represented to be his attorney.

18 Q Did you eve- receive a letter or a cover letter of
19 any kind with respect to a document that suggested that Mr.
20 Buchanan had an attorney representing him during this, the
21 preparation **of** this asset purchase agreement?

22 A Not to my recollection.

23 Q **Now** subsequent to the signing **of** the asset
24 purchase agreement, there was an application that was filed
25 to assign the licenses for the nine translators, correct?

1 Or there were nine different applications, I should say.

2 A There were nine translators that were being sold
3 and there were applications for consent for each of the
4 translators.

5 Q Do you know whether Mr. Buchanan was represented
6 by counsel during the prosecution of the applications **to**
7 assign the licenses for the translators?

8 A No.

9 Q As an inducement to cause Coastal to purchase the
10 translators, did you show Peninsula's station ratings to Mr.
11 Buchanan?

12 A This was in '96? I'm trying to recall if we
13 bought the survey for that year, but there's a good chance
14 we may have had a survey, a current survey, and I would have
15 shown him what the survey results were if that's the case.
16 We didn't buy the survey every year, but if we had the
17 survey, I would shown it to him.

18 Q The point of showing him the survey would have
19 been what?

20 A To represent the percentage **of** audience that the
21 **two** stations that were being translated had according to the
22 survey results.

23 Q **As** an inducement to *cause Coastal to purchase* the
24 translators, did you show any of the stations' accounts to
25 Mr. Buchanan, and by stations I mean the full power stations

that were being translated.

2 A What do you mean by accounts? A list of people
3 who advertised or what? What do you --

4 Q It could be how much money is coming in to the
5 stations.

6 A My recollection is that we provided Mr. Buchanan
7 with a client list that simply showed who had bought time
8 with our radio stations from the standpoint that these would
9 also be prospective clients that he may want to contact for
10 his own sales effort, and I don't recall giving him any
11 specifics as to who was spending what for what radio
12 station, what specific contracts.

13 Q Did you show Peninsula rate cards to Mr. Buchanan?

14 A Yes.

15 Q I'd like you to turn briefly to the Enforcement
16 Bureau tab 24 and it appears that there are three different
17 rate cards here bearing dates of September 1, 2000, May 1,
18 2000 and December 1, 1995. Was a document similar to this
19 shown to Mr. Buchanan in terms of a rate card?

20 A Well, we had a previous rate card which would have
21 been in effect in '96. I couldn't tell you the number but
22 most likely like rate 18 or 19, somewhere. These are
23 numbered sequentially, so he probably **would** have gotten one
24 that was in effect in '96.

25 Q For those **of** us **who** are enlightened, the rate card

1 rate that appears here, what exactly is that supposed to
2 represent, and I'll explain what I'm getting at. Does this
3 dollar figure here represent what Peninsula expects to
4 charge a commercial advertiser, or is this something
5 different?

6 MR. SOUTHMAYD: Your Honor, I want to raise an
7 objection if I could.

8 JUDGE SIPPEL: Go ahead.

9 MR. SOUTHMAYD: The issue in this proceeding are
10 Mr. Becker's operation of his translators subsequent to
11 August 29, 2001. We've now delved back to 1996 and a
12 proposed sale of the translators that was never consummated
13 and we've gotten even further afield on what Mr. Becker
14 showed his potential buyer in connection with the potential
15 sale of the translators. There is absolutely no relevance
16 to this proposed sale and this line of questions to Mr.
17 Becker's operation of the translators from August 29, 2001
18 forward.

19 MR. SHOOK: Your Honor, if you recall the state of
20 mind document that is part of Peninsula's direct case, it
21 refers to matters that essentially date back to the
22 beginning of Peninsula's operations, and all go in to
23 forming what was in Mr. Becker's mind in terms of justifying
24 or not as the case may be the, Peninsula's operation of the
25 translators during the period of time when the Commission

1 told Peninsula to turn them off, and I will grant Mr.
2 Southmayd that this is not the foremost matter that would
3 have been in anybody's mind, but I do believe that it played
4 a part in what happened.

5 JUDGE SIPPEL: You're arguing that Peninsula
6 opened the door by coming in with this proffer on the frame,
7 the state of mind. Is that what you're --

8 MR. SHOOK: Well the state of mind is rather
9 expansive.

10 JUDGE SIPPEL: Yeah, well you mentioned, you said,
11 though, that there was material in there to which this was,
12 this line of questioning and evidence was responding. I
13 just ask you to just focus on that area of the statement.

14 MR. SHOOK: Well if you go to pages 5, principally
15 page 5 which references the attempted sale of the
16 translators to Coastal.

17 JUDGE SIPPEL: I'm quoting from this, page 5 of
18 the statement of Mr. Becker which is what is Peninsula 1-C
19 as in Charlie. Okay, there's a reference **down** here where he
20 says, ironically we struck some of the stuff that you
21 objected to.

22 MR. SHOOK: I know. I know.

23 JUDGE SIPPEL: *It says, "PCI could not in good*
24 *conscience sell Coastal translators which had little or no*
25 *value as a result of the FCC's interference with the terms*

1 of the sale.'' Is that the subject matter that you're
2 referring to?

3 MR. SHOOK: I'm trying to get at the value of
4 these translators.

5 JUDGE SIPPEL: Because he's saying it had little
6 or no value.

7 MR. SHOOK: Well, subsequent to the various
8 actions that the Commission took that are referenced here.

9 JUDGE SIPPEL: And you're testing that statement
10 with this?

11 MR. SHOOK: Well I'm trying to, I'm trying to put
12 flesh on, I think the skeleton is here in terms of the
13 reference to value. I want to have an understanding in the
14 record of what the value of these translators is.

15 JUDGE SIPPEL: Well you're trying to add to his
16 case or add to your case?

17 MR. SHOOK: Well Your Honor, if I knew what I was
18 doing, I would be adding to the value of my case, but
19 perhaps I'm doing Peninsula a favor unwittingly.

20 JUDGE SIPPEL: Well we'll say that you're adding
21 to the value of the record.

22 MR. SHOOK: Well that's certainly --

23 *JUDGE SIPPEL: Or that's what you're trying to do.*

24 MR. SHOOK: That's certainly a --

25 JUDGE SIPPEL: I don't want to make too light of

1 this, but you have a point, Mr. Southmayd, but on the other
2 hand, Mr. Shook has pointed out that it certainly relates to
3 this argument that was made in what I just read, so I'm
4 going to overrule the objection.

5 MR. SOUTHMAYD: Could I be heard on one other
6 thing?

7 JUDGE SIPPEL: Yes, sir.

8 MR. SOUTHMAYD: And not to belabor the point and I
9 apologize. That's not my intention.

10 JUDGE SIPPEL: Sure.

11 MR. SOUTHMAYD: The contract that we just went
12 over specifies the value of the translators. *It's* there in
13 black and white. It's 100,000 dollars. It's right in the
14 contract. It's what the translators were being sold for.
15 Why we need to go on this detour to get to what's already in
16 black and white here in the contract just wasn't clear to
17 me. That's the only other point I wanted to make.

18 JUDGE SIPPEL: Do you want to respond to that, Mr.
19 Shook?

20 MR. SHOOK: No.

21 JUDGE SIPPEL: **All** right. I made the ruling.
22 Let's get this over with and we'll go on our way.

23 **BY MR. SHOOK:**

24 Q **All** right. I believe my question was, it was a
25 follow-up to did you show Peninsula rate cards **to Mr.**

1 Buchanan and I believe your answer was yes to that question,
2 and the follow-up question to that was whether the material
3 that appears following Enforcement Bureau Exhibit tab 24 was
4 akin to what it was that you showed Mr. Buchanan.

5 A Well the material that follows tab 24 are rate
6 cards and Mr. Buchanan would have seen a rate card at the
7 time that was in effect, a valid rate card in '96 he would
8 have seen.

9 Q And the follow-up question to that was in terms of
10 the dollar figures that appear on the rate card, are those
11 dollar figures pertaining to commercials that Peninsula
12 would sell to the ordinary commercial advertiser or does it
13 represent something else?

14 A No. They, this is the spot rate, the published
15 spot rate for what it would cost to buy a 30-second or 60-
16 second ad on the primary radio stations in various time
17 period categories, Triple A, DAP and TAP time periods, so
18 it's a matrix.

19 It shows the cost per spot for various time
20 categories on each radio station that we sell. We sell the
21 primary station which happens to include coverage by virtue
22 of the fact that the signal is also translated and carried
23 in other areas through the translators, but we **don't sell**
24 time on individual translators. We always sell the primary
25 station and this is the rate that we charge.

1 JUDGE SIPPEL: What do those abbreviations stand
2 for, Triple A, DAP, TAP?

3 THE WITNESS: Triple A time refers to drive time.
4 It's six a.m. to nine a.m. and three to six in the
5 afternoon. It's a higher listening period, referred to as
6 drive times, so the spot rate is slightly higher. Daytime
7 Audience Plan refers to six a.m. to seven p.m. and Total
8 Audience Plan --

9 JUDGE SIPPEL: Okay, daily and total. Okay,
10 Triple A is just Triple A, the best you can get?

11 THE WITNESS: Yes.

12 BY MR. SHOOK:

13 Q And by spot rate, that means if somebody bought
14 one commercial, that that is what they would expect to have
15 to pay?

16 A Yes.

17 Q Now if they bought more than one, then the rate
18 per spot would be reduced?

19 A There are all kinds of packages which are
20 developed off of the rate card which would include various
21 discounts depending on the quantities of ads that are
22 purchased.

23 This represents a starting point for an advertiser
24 and then depending on what current promotions we have going
25 on, we may develop something, for example, a package that

1 targets the permanent fund dividend in Alaska. When people
2 get their dividends, there's a lot of money, there's 1.3
3 billion dollars that gets pumped into the economy and we
4 will offer a special package where they can buy for the
5 amount of their dividend, they will get a certain number of
6 spots bonused as an incentive to collect that dividend
7 before they spend it on a car or go somewhere else.

8 JUDGE SIPPEL: The dividends on the oil sales or
9 what?

10 THE WITNESS: The dividend is a, what that
11 represents is a payout to every citizen or member of the
12 State of Alaska that lives in Alaska, resident of Alaska
13 It represents a payout of 25 percent of the interest that's
14 earned on the Alaska Permanent Fund which represents
15 Alaska's oil wealth account that we generated when the North
16 Slope was developed and the oil companies developed these
17 huge oil resources in Alaska.

18 That money, the state's portion of that money went
19 into a permanent fund that was invested and earned money and
20 every resident, then, gets a check every year of the
21 distribution of 25 percent of the interest that that fund
22 earns, and it's **up** to roughly 30 billion dollars now. **So**
23 every year you can expect a check of 1,500 to perhaps it's
24 been as high as almost 2,000 dollars a year, every man,
25 woman and child in the state.

1 JUDGE SIPPEL: And of course people who are trying
2 to sell products, they know when these checks are coming.

3 THE WITNESS: Exactly, yeah, so you will have a
4 flurry of ideas, of ways to confiscate those checks. Now
5 we're lost in the fray with everybody else trying to collect
6 the money.

7 JUDGE SIPPEL: Interesting. Do we have much more
8 on these?

9 MR. SHOOK: No, not much more.

10 BY MR. SHOOK:

11 Q Did Mr. Buchanan ever show you a proposed rate
12 card for translators?

13 A Mr. Buchanan developed his own rate card and he
14 did show me a copy of it, sure.

15 Q Did you ever discuss with Mr. Buchanan how Coastal
16 could raise money in conjunction with its operation of the
17 translators?

18 A Mr. Buchanan formulated his own business plan. I
19 offered various ideas, but he was the sole person who
20 developed his own business plan **of** how he would make his
21 ends meet with this opportunity.

22 Q Well in terms of my specific question, basically
23 did you ever *discuss with* Mr. Buchanan how he, how Coastal
24 could raise money in conjunction with its proposed operation
25 of the translators? would that be a yes?

1 A Yes. **As** the owner of the translator stations, he
2 was entitled to sell one 30-second announcement an hour on
3 his own individual translator station. That's provided for
4 in the rules, and so that was his intent, to sell time on
5 his own network with one 30-second commercial announcement
6 an hour and that's where he would have generated his own
7 revenue to pay for his own expenses.

8 Q Did you have any discussion with Mr. Buchanan
9 about the likely cost of maintaining the translators?

10 A For the most part, I in terms of maintenance, I
11 left that issue up to Mr. Buchanan. He was responsible,
12 once he purchased the network, the maintenance issues were
13 all his. He would have to develop that in his own business
14 plan and allocate what he thought was a reasonable amount
15 towards maintenance. I was out of the loop at that point.

16 Q Maybe I should ask my question a little bit
17 differently. Did you, did you ever tell Mr. Buchanan how
18 much it cost Peninsula to maintain the translators?

19 A I gave Mr. Buchanan an estimate of what the
20 expenses would be based on space and power and leases that
21 were in effect to where these translators were **so** he would
22 have some idea what his operating expenses would be, so I
23 gave him information about it.

24 Q Did you ever have any discussions with Mr.
25 Buchanan about how Coastal would sell commercial time on the

1 translators?

2 A How he would sell it?

3 Q Yes.

4 A I pretty much left that up to Mr. Buchanan. He
5 knew the rules, the one 30-second announcement an hour. How
6 he went about that was Mr. Buchanan's business. I did not
7 direct him or give him really any guidance on how he was to
8 do this. This was his business proposition and he's, once
9 he assumed ownership, he was on his own in terms of where he
10 went with it after that point. Once he acquired the
11 translators, his business plan was his business and I,
12 again, was out of the loop from that point on.

13 I offered him suggestions for what I thought might
14 work, but the sole responsibility of running that system was
15 strictly Mr. Buchanan's, once he assumed ownership.

16 Q A little background to this sale. Did you seek
17 him out or did he seek you out?

18 A Dave and his wife Judy showed up on my doorstep I
19 believe it was in October or November of '96 and they had
20 been looking at property to purchase in the area and came up
21 and knocked on our door because they were looking at some
22 land across the road and been looking at other lots down the
23 street and asked us if we knew, happened to know who the
24 person was that was selling the property, and of course we
25 hadn't seen him for a long time and in the course of the

1 conversation, I asked him if he was still doing anything in
2 radio and he said that no, but he was thinking about maybe
3 doing something again in it, and then at that point I
4 informed him that we were looking for someone to acquire our
5 translators and asked him if he might be interested and he
6 said yeah, basically tell me more. So that's, that's how
7 the initial contact came.

8 Q And with the asset purchase agreement being signed
9 on November 4, this process, then, from the time you had
10 your meeting and conversation with Mr. Buchanan to the
11 signing of the document was about a month?

12 A I don't remember the exact time period. It would
13 have probably been not that late. It might have been
14 earlier in the summer, but I think they were down looking at
15 land that summer, but the exact time period I couldn't tell
16 you or rather I don't recall.

17 Q Now as a technical matter, do you have any
18 knowledge as to how commercials that Coastal would sell
19 would actually be inserted into the programming?

20 A As a technical matter, they would be inserted. At
21 the time our idea was to insert them on the primary station.
22 Since that point in time, the technology has become readily
23 available to sell and add on each individual translator to
24 do that with a computer located at each individual
25 translator and to control that computer over the Internet to

download the ads over the Internet to the computer and to
2 play an individual spot in an individual market on each
3 translator station, and that technology is readily available
4 today and if we were to do it today, that's most likely the
5 way it would be done because that greatly increases the
6 potential revenue that an individual translator can generate
7 because you can run individual spots on each individual
8 translator as opposed to running one spot on the whole
9 network.

10 Q When did this transition *of* technology take place
11 that you just referenced?

12 A Over the last five years.

13 Q But if I understand you right, when the deal was
14 first made, the plan was to have a commercial run on all
15 seven or all nine translators at the same time?

16 A Yes.

17 Q Or actually *I* should --

18 A The same ad plays on all the translators.

19 Q I should clarify that in that because there were
20 two different primary stations that worked --

21 A Yes.

22 Q -- there would be, there could **be** a commercial run
23 on one set of translators that **broadcast** KWVV-FM and then a
24 second commercial that would appear on the translators
25 that --

1 A Yes. Both primary stations are independent of
2 each other, so the ad that plays on one station is going to
3 play on all the translators associated with that station.
4 The ad that plays on the other one plays with all those.

5 Q Who was going to produce the commercials?

6 A That was Mr. Buchanan's responsibility.

7 Q What understanding did you have as to what
8 capability existed for Coastal to do that?

9 A Initially he probably would contract that
10 capability out to someone who could produce the ads. I
11 don't know what his business plan was further down the line.
12 My assumption would be that he would set himself up with his
13 own recording studio and eventually do some of the
14 production himself and thereby increase his bottom line.

15 He did mention to me he was searching for studio
16 equipment so that he could set up his own recording studio.

17 Q Did you make Mr. Buchanan aware of the petitions
18 to deny that were directed against the renewal applications
19 of the translator licenses?

20 A **It's** my recollection that yes, I did because the
21 petitions to deny precipitated the letter from Linda Blair
22 which directed us to divest, **so** the reason for divesting
23 essentially was the **petitions** to deny.

24 JUDGE SIPPEL: Let me just ask a point **of**
25 clarification. You're saying that the commercials, the

1 program and the commercials that would be run on the
2 translator stations that were associated with respect to
3 primaries, the, now what would be the charge, the charge,
4 this rate card that you have here on Exhibit 24? Would that
5 apply only, would that apply to the whole thing as a
6 package, the primary and the translators or the translators?

7 THE WITNESS: Our rate card applies to the whole
8 package. It includes the primary station plus the
9 translators. Mr. Buchanan --

10 JUDGE SIPPEL: Yeah, go ahead.

11 THE WITNESS: -- since he owned, would own the
12 network, would not pay the same rate because he's running
13 his ads on his own network. He would only pay us what we
14 would feel would be a portion of the cost allocated to us.
15 He would get his portion for free because he owns the
16 network and so he wouldn't have to pay to run ads on his own
17 stations.

18 JUDGE SIPPEL: I think I'm understanding. Would
19 this be because you would have the, you would still have the
20 primary station.

21 THE WITNESS: Yes.

22 JUDGE SIPPEL: You **just** for the translators
23 because he's going to take over. So **that's** how the money
24 would -- okay. I understand much better. Thank you.

25 BY MR. SHOOK:

1 Q Did you bring to Mr. Buchanan's attention Section
2 74.1231b of the rules and that pertains to the signal
3 delivery restrictions that exist for translators? I can
4 show you a copy of the rule if you need to refresh your
5 recollection about what the rule refers to.

6 A I don't know in what context that would be--

7 Q Well let me supply you a context. The Seward
8 translator, translators, received the primary feeds, not *by*
9 over the air transmission but they had to receive it by a
10 satellite.

11 A Yes.

12 Q And the Seward transmission, Seward translators,
13 rather, had received written waivers from the Commission's
14 staff and they appear as one of your exhibits here. I
15 believe it's PCI Exhibit 1B. So that's the context for
16 where I'm coming from.

17 A Would you restate the question?

18 Q All right. My question was did you alert Mr.
19 Buchanan to the restrictions that exist with respect to Rule
20 74.1231b?

21 A By alerting, Mr. Buchanan was aware that we were
22 feeding Seward via satellite, so I would say he had to know
23 that there was, that some kind of an exception to the rule.
24 I don't know. **You'll** have to ask -- I don't know. I still
25 don't understand your question.

1 Q No, I'm not asking for his understanding of
2 something. I'm simply asking whether you brought that rule
3 to his attention.

4 A At some point I would have brought the rule to his
5 attention in not the context of Seward so much as in the
6 context of Kodiak because there was a request to get a
7 waiver to reinstitute service to Kodiak which required a
8 waiver of that rule in order to reestablish service in
9 Kodiak because the Air Force tore down our reception
10 antennas and so yeah, at some point, we would have had to
11 have talked about that rule which had to do with signal
12 delivery, but I would say initially that was never an issue
13 because we were on the air in Kodiak at the time the
14 purchase was proposed. It only came up later when the
15 service was discontinued involuntarily for us.

16 Q When did you first get wind of the plan to have
17 the antennas torn down that existed in Kodiak?

18 A The Air Force had, as far as getting wind of their
19 plans, had talked about tearing down those antennas for as
20 long as I leased them which was essentially 14 years or
21 more.

22 Q Did you bring that to Mr. Buchanan's attention?

23 A Yes.

24 Q Now as Mr. Southmayd pointed out a little while
25 ago, the translators were going to sell for 100,000 dollars

1 from Peninsula to Coastal. Correct?

2 A Yes.

3 Q Could you tell us how that price was determined?

4 A As you saw in my deposition, it was a mutually
5 agreed upon round number price based on a translator,
6 average cost of putting a translator in of between 10 and
7 15,000 dollars, in some cases less, depending on whether
8 there were costs of putting up a tower, each site is a
9 unique situation. In some cases you can lease space on an
10 existing tower. In another case, you have to build your
11 own, so there's a wide range of costs involved from I would
12 say typically 5,000 on the low end to as much as over
13 20,000.

14 In the case of Seward, we had to purchase a
15 satellite dish and the satellite dish cost was almost 10,000
16 dollars. Getting it delivered to Alaska, that alone let
17 alone the satellite receiver and all the rest of the
18 equipment that was associated with it, **so** it was essentially
19 an average cost of 10, 11,000 dollars per translator times
20 nine makes 100,000, and that factored in the cost **of**
21 actually getting licenses and the FCC aspect of running
22 these through and getting, you know, the approvals.

23 Q Did those costs take into account depreciation?

24 A Depreciation?

25 Q Yes, sir.